



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

Applicant for Security Clearance

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) ISCR Case No.: 17-02078  
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**Appearances**

For Government: Nicholas Temple, Esquire, Department Counsel

For Applicant: *Pro se*

May 4, 2018

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the foreign influence security concerns raised by his property in Afghanistan, and family members who are citizens and residents of Afghanistan. His request for a security clearance is denied.

**History of Case**

On December 14, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On August 4, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, Foreign Influence. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective within the DOD on June 8, 2017.

Applicant answered the SOR in writing on September 3, 2017 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on October 23, 2017. DOHA issued a Notice of Hearing on October 24, 2017, setting the hearing for November 1, 2017. Applicant waived the 15-day notice requirement. (Hearing Exhibit (HE) II.)<sup>1</sup> At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 3 into evidence. They were admitted without objection. Applicant testified and offered Exhibit (AE) A into evidence. AE A was admitted without objection. I granted Applicant's request to leave the record open until December 1, 2017, to permit submission of additional evidence. DOHA received the hearing transcript (Tr.) on November 14, 2017. Applicant submitted post-hearing documents on November 5, 2017. His post-hearing documents were marked AE B, and admitted without objection. The record closed as scheduled.

### **Procedural Rulings**

I took administrative notice of facts concerning Afghanistan. Those facts are set forth in the following: Government's Request for Administrative Notice for Afghanistan, marked as HE III. The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. Those facts are set out in the Findings of Fact, below.

### **Findings of Fact**

Applicant admitted SOR allegations 1.a, 1.b, and 1.c. He denied SOR allegations 1.d, 1.e, and 1.f. His admissions are incorporated into the following facts:

Applicant is 47 years old. He is married to a naturalized U.S. citizen. He has three daughters, who are naturalized U.S. citizens. His son is a natural-born U.S. citizen. Applicant was born in Afghanistan. He attended undergraduate school in Afghanistan and earned a bachelor's degree there. He immigrated to the United States in 2009, under a special immigrant visa, which he qualified for due to his support of the U.S. military forces as a linguist for four years. He was naturalized as a U.S. citizen on August 7, 2014. He seeks a security clearance in connection with his work as a linguist. (GE 1; AE A; Tr. 27-32.)

Applicant's parents are deceased, as are two of his brothers. (Tr. 36.) He has three sisters and one brother who are citizens and residents of Afghanistan. His youngest sister is a homemaker. Applicant speaks to her by internet phone twice per year on holidays. He last saw her in 2009. Her husband works in a garment store. Applicant's middle sister and oldest sister are also homemakers. Their husbands are deceased. Applicant speaks to them approximately twice per year, by internet phone. Applicant's brother is a former employee of the Afghan Ministry of Commerce, where he

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<sup>1</sup> HE I is a copy of a letter by Department Counsel to Applicant, forwarding GE 1-2 and the Administrative Notice materials.

worked in the tech sector. He retired due to health problems. Applicant contacts him two to three times per year. Applicant sent his siblings approximately \$2,000 in support, prior to 2014. However, he has no intention to provide them support in the future. (Answer; GE 1; GE 2; Tr. 36-46, 67-70.)

Applicant's nephew, alleged to be a citizen and resident of Afghanistan employed by the Afghan government, immigrated to the United States approximately two years ago. He formerly worked as a communications specialist for the Afghan government, but is now employed as a graphic designer. He has legal permanent resident status in the United States. (GE 1; GE 2; Tr. 45-46, 51-52, 70.)

Applicant's wife has three brothers and two sisters. Her parents are deceased. Her three brothers and one sister are Afghan citizens residing in Germany. She has one sister who is a citizen and resident in Afghanistan, but is not employed. That sister has been diagnosed with breast cancer and is ill. They communicate on a weekly basis and Applicant's wife sends her financial support. Another sister, who lived in Afghanistan and was a government employee, passed away in 2013. (Answer; GE 1; GE 2; Tr. 59-66, 77.)

Applicant purchased a home in Afghanistan in approximately 2007. It is approximately 200 square meters and construction has not been completed. He paid approximately "200,000 Afghanis." He estimated that it is worth \$14,000 dollars. He intends to sell it. He has no other assets in Afghanistan. (GE 1; Answer; Tr. 52-57, 75.) Applicant does not maintain contact with anyone else in Afghanistan, other than professional U.S. military contacts necessary for his job. (Answer; Tr. 65.)

Applicant recently purchased a home in the United States. It is valued at approximately \$325,000. (Tr. 57.) He only put down one percent of the purchase price. (Tr. 58.) He owns two vehicles, but has no other assets in the United States. (Tr. 76.)

Applicant is considered an "outstanding instructor" and has provided "invaluable help" to his U.S. Army colleagues. A unit commanding officer indicated Applicant "is highly competent, articulate, disciplined, experienced, and one of the best interpreters I have observed in over 18 years of service." (AE B.) He has been awarded numerous certificates of appreciation for his service as a linguist. (AE B.)

The U.S. Department of State has issued a travel warning with respect to Afghanistan. It notes that travel to all areas of Afghanistan is unsafe due to the ongoing risk of kidnapping, hostage taking, military combat operations, landmines, banditry, suicide bombings, and insurgent attacks. Attacks may target official Afghan and U.S. governmental convoys and compounds. Extremists associated with Taliban networks, and the Islamic State in Iraq and the Levant, are active throughout Afghanistan. Widespread human rights abuses are reported. (HE III.)

## Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

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## Analysis

### Guideline B: Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Three are potentially applicable in this case:

- (a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and
- (f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

Applicant has connections to his sisters and brother, who are citizens and residents of Afghanistan.<sup>2</sup> His nephew is an Afghan citizen, residing in the United

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<sup>2</sup> SOR ¶ 1.e alleged Applicant had a sister-in-law who was a citizen and resident in Afghanistan, and was employed by the Afghan government. That sister-in-law is deceased. Applicant's surviving sister-in-law in Afghanistan was not alleged in the SOR, and is not considered for disqualifying purposes. However, she may be considered under the mitigating conditions or whole-person analysis.

States. Additionally, Applicant owns a \$14,000 property in Afghanistan. There is an articulated heightened risk associated with having ties to family members and property in Afghanistan, due to the activities of terrorist organizations and insurgents operating within its borders. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

None of the above mitigating conditions were established in this instance. The potential for a conflict of interest is present due to Applicant's ongoing and significant ties to his family and property in Afghanistan. While he generally contacts his siblings only twice a year, his wife maintains close contact with her sister, communicating with her weekly and sending money frequently. He has little equity in his recently purchased U.S. home, and its values appears to be outweighed by the value of his \$14,000 property in Afghanistan. He failed to demonstrate deep and longstanding relationships or loyalties in the United States. While he is credited for his years of service to U.S.

military units as an Afghan linguist, the record contains little information on assets, or other deep and longstanding connections to the United States. Without more information, it cannot be determined that Applicant would resolve any conflict of interest in favor of the U.S. interest, or would not be subject to heightened risk of foreign influence.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept. Applicant served honorably supporting U.S. military units as an Afghan linguist. However, the record lacks sufficient information to support a finding that he would resolve any conflicts of interest in favor of the United States. His Afghan family and property interests create ongoing heightened potential for pressure, coercion, exploitation, or duress. I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Overall, the record evidence leaves me with doubts as to Applicant's suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the Foreign Influence guideline.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant national security eligibility and a security clearance. National security eligibility is denied.

Jennifer I. Goldstein  
Administrative Judge